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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,500	10/24/2003	Peter W. Carhuff	88265-7670	1144

28765 7590 11/30/2009  
WINSTON & STRAWN LLP  
PATENT DEPARTMENT  
1700 K STREET, N.W.  
WASHINGTON, DC 20006

EXAMINER
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MARKOFF, ALEXANDER

ART UNIT	PAPER NUMBER
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1792

NOTIFICATION DATE	DELIVERY MODE
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11/30/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@winston.com  
mwalker@winston.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/692,500	<b>Applicant(s)</b> CARHUFF ET AL.	
	<b>Examiner</b> Alexander Markoff	<b>Art Unit</b> 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 23, 29-31, 35-37, 42, 47, 48, 50-58, 60-62 and 67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23, 29-31, 35-37, 42, 47, 48, 50-58, 60-62 and 67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/19/09 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 23, 29-31, 35-37, 42, 47, 48, 50-58, 60-62 and 67 rejected under 35 U.S.C. 103(a) as being unpatentable over Aoki et al (US Patent NO 4,860,550) in view any one of Barinas (US Patent NO 5,329,950) and Rolland (US Patent NO 6,564,698).

Aoki et al teach a method of operating, cleaning and sanitizing a food dispenser as claimed, except for recirculation the cleansing fluid back to the cleansing fluid supply. See entire document, especially Figures 1B, 2A, 8-11, 16, 25A, B, 26 A-D, 28, and related description and description at columns 1, 2, 6-13, and 19-23.

Aoki et al teach automatic washing and sterilizing of a dispenser as claimed, they teach the use of hot water with a temperature as claimed, they teach the use of the acid as claimed, they teach multiple application of hot water and the application time as claimed. Aoki et al teach the use of the source of the washing/cleaning fluid inside of the housing of the dispenser. They also teach dispensing of ice creams and servings for consumptions by individuals. Aoki et al also teach a controller with a CPU electrically connected to the parts of the dispenser and controlling the operation and functioning of the dispenser, including, dispensing, washing and sanitizing operations.

Barinas and Rolland teach that it was known to recirculate cleansing fluids through food dispensers.

It would have been obvious to an ordinary artisan at the time the invention was made to recirculate cleaning fluids in the method of Aoki et al in order to reduce the use of chemicals and supplies with reasonable expectation of adequate results since Barinas and Rolland teach such as known in the methods of cleaning food dispensers.

As to claims 60 and 61, which require a specific velocity of the flow of hot water:

First, it is noted that the claims do not specify any specific part of the flow path, wherein the velocity should be in the claimed range.

Second, the velocity of the cleaning fluid is a result effective variable. It would have been obvious to an ordinary artisan at the time the invention was made to find an optimum flow velocity of the cleaning liquid in the method of Aoki et al by routine experimentation in order to ensure proper cleaning sanitizing of the dispenser.

### ***Response to Arguments***

6. Applicant's arguments with respect to amended have been considered but are moot in view of the new ground(s) of rejection.

The applicants amended the claim. The referenced amendment have obviated the rejections under 35 USC 112(1) and (2) made in the previous Office action.

The amended claims, which do not any longer require conducting cleaning and sanitizing without having to connect the cleansing fluid supply to the dispensing line (path) are addressed above.

The rejection over newly discovered prior art is applied.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 4,703,628 and 2002/0074350 are cited to show that the use of hot water was known for cleaning and sanitizing food dispensers.

US 6,625,993 is cited to show the state of the art with respect to automation aspects of cleaning and sanitizing of food dispensers and different sequences of cleaning, rinsing, sanitizing and dispensing, as well as different method of programming and initiation of the referenced cycles.

US 6,490,872 is cited to show the state of the art with respect to food dispensing machines with Clean-In-Place units.

.Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Markoff whose telephone number is 571-272-1304. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Alexander Markoff  
Primary Examiner  
Art Unit 1792

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